



State of Utah

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## DEPARTMENT OF HUMAN SERVICES

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**TO:** Administrative Rules Committee  
Utah State Legislature

**FROM:** Lisa-Michele Church, Executive Director  
Department of Human Services

**DATE:** October 28, 2009

**SUBJECT:** **Lisa-Michele Church's Prepared Remarks for the Administrative Rules Committee of the Utah State Legislature.**

Senator Stephenson, Representative Oda and members of the Committee:

The subcommittee has asked me to testify today about Administrative Rule 495-888, one of the Department of Human Services' Rules for investigating abuse and neglect allegations.

First I would like to apologize to the Committee for not appearing on September 10th when this matter first came before you. I meant no disrespect to the Committee, but I was following the instructions of the Departments' attorneys due to the pending litigation filed by Layne Meacham against the Department in both state and federal courts. Since that time I have worked with the Co-Chairs and the Committee's legal counsel to clarify matters. I appreciate the assurance that has been given that we will not be discussing any matters today that are directly relevant to the pending litigation against the State.

As for the specific rule, R495-888, I understand the Committee is concerned about the Rule and may intend to sunset it because it does not involve a contract with an entity outside of the Department of Human Services. This is obviously your prerogative and I will abide by your decision. However, I would like to explain how this rule came about and what the Department is trying to accomplish in its use.

Prior to this Rule's formulation, I was grappling with a broader issue: How should the Department conduct investigations when someone alleges that a Department employee,

a Department provider or a Department contractor has abused or neglected someone in violation of Utah law?

In answering this question and devising a procedure, we had three specific goals in mind:

- 1) The investigations should be done by trained investigators who have specific expertise in Utah law governing abuse and neglect of children, disabled, or vulnerable adults,
- 2) The investigations should be done by persons independent of the Department's service delivery agencies, such as Division of Child and Family Services (DCFS) or Division of Services for People with Disabilities (DSPD),
- 3) There should be consistent standards and results, whether the allegation was made against a member of the public or a person related to our Department and whether the allegations concern abuse or neglect of a child, or abuse or exploitation of a vulnerable adult.

#### Background:

Utah law sets forth a detailed statutory scheme for investigating and handling claims of abuse and neglect. The law also empowers the Department of Human Services, through its service delivery divisions, to carry out those investigations and provide services to those who are abused and neglected. But what happens when the allegation is made against someone who investigates, cares for, or provides services to children?

There are some 20,000 allegations of abuse and neglect made to DHS each year, and a few hundred of those are made against parties related to the work of the Department of Human Services. We call them Related Parties. (We don't call them "conflict of interest" cases because that would confuse people with the term used in Department policy to cover a different scenario—when a board or staff member has a financial interest in a provider or other related area. Thus, we chose the term Related Parties.)

We need to investigate Related Parties with the same professionalism that we use when investigating claims against members of the public. It is problematic when the investigator works side by side with the person he is then asked to investigate. It is difficult enough to find out you are about to be investigated for alleged abuse; it is even more difficult to find out that your co-worker in the same division is investigating you. I believe it could also give the public the mistaken impression that the investigation would not be as impartial as needed.

Of all the things we do in Human Services, handling these delicate matters and balancing these critical interests are some of the most controversial. We have everything to gain by making sure our related parties investigations are as impartial, independent and consistent as possible.

When I became Executive Director of DHS in 2005 I became aware of several instances that illustrated this point to me. For example, at one point DCFS was investigating an employee of Juvenile Justice Services in connection with a work incident involving a physical restraint. This case, and others, highlighted the difficulty of having service providers investigate each other: the work they do is very similar, even though it is for different agencies, and many times the agencies collaborate and work together. This closeness was too "cozy" and made me concerned about the fairness of one service agency investigating another. The "arm" wasn't long enough.

During 2005-2007, my concerns extended beyond the scope of just DCFS related party investigations. I heard of instances where an agency investigated a sister agencies' employees in the adult context as well. While DCFS contracted with an outside group called Sipapu to investigate related parties, other agencies such as APS and DSPD did not have a consistent practice. Some agencies did their own parallel investigation with Child Protective Services, Some agencies had Human Resources investigate, and some called on law enforcement or other regulatory bodies.

I had personally established a high expectation of ethics in my leadership team, and I spent considerable time with our management personnel talking about how important it was for DHS to maintain the public trust. We are tasked by the legislature and the community with performing some of the most sensitive and controversial duties in society investigating abuse and neglect of family members. Our employees ought to expect the same high standards if they are being investigated.

Besides other DHS activities I pursued on ethical issues those first few years, I made an on going request to the my leadership team to standardize the way we investigated abuse and neglect when it involved Related Parties. I wanted independence, consistency and expertise.

Now, to the genesis of the related parties rule. DCFS had contracted with Sipapu for certain Related Parties investigations prior to 2004, and in 2004, when it was rebid, Sipapu was the only bidder. In May 2007, the contract again came up for renewal, and purchasing issued a new RFP. 934 invitations to bid were sent electronically, and three proposals were submitted. One was from Sipapu, the current contractor. The second was from two current DHS employees, one of who was currently employed with DCFS. The third proposal came from an existing contract provider, who also had current connections with DCFS.

The proposals were scored, and the contract was awarded to the bidder who was employed at DCFS. One of the unsuccessful bidders protested the award, raising concerns very similar to the ones that I already had regarding this proposal, and regarding the broader, department wide issues outlined above. In this case, the unsuccessful bidder claimed that the DCFS employee appeared to have inside information, and due to his DCFS employment, access to proprietary information of competing bidders. In fact, the winning bidder audited the unsuccessful bidder as part of his regular DCFS job duties!

When I reviewed the protest and additional concerns raised by the scoring committee, I concluded that the RFP was flawed, and I asked State Purchasing to cancel the RFP so that I could reconsider its scope. I also revised DCFS policies to address bidding by current employees.

As to scope, I was again focused on the need for consistency throughout the Department. I didn't think the RFP went far enough, because it was limited to DCFS Related Parties and did not provide an independent investigative procedure for all Related Parties. For example, we needed an independent investigator when an Adult Protective Services employee is accused of elder abuse, or when a Developmental Center employee is accused of abuse of a disabled person. I wanted to provide a Department-wide service for related parties, and one that would provide consistent, independent investigations.

I sought legal advice during this process and reviewed the statutes with my attorneys.

UCA 62A-4a-202.6(1)(b) states that "The division (DCFS) shall in accordance with UCA 62A-4a-409(5), contract with an independent child protective service investigator to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division. The executive director of the department shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(b)(i)."

UCA 62A-4a-409(5) states that "In any case where the division supervises, governs, or directs the affairs of any individual, institution, or facility that is alleged to be involved in acts or omissions or abuse or neglect, the investigation of the reported abuse or neglect shall be conducted by an agency other than the division." This section does not say the agency has to be outside the Department.

I noted that the statute said that an investigation should be done by an independent division. I looked at the options. Again, I had concerns about the potential contractors in light of the concerns brought out by the recently cancelled RFP. I looked into having law enforcement do all abuse and neglect investigations of related parties. They did not have the resources, and they used criminal standards very different than ours. I

looked into having the Attorney General's office do these investigations, as they had in the past. They were not staffed for it either and their standards and training were oriented towards law enforcement as opposed to the practice model that forms the cornerstone of DCFS investigations. I then looked internally to the Office of Services Review. I believed this idea had potential, for many reasons.

First, this option was particularly appealing because, by 2008, the state was having budget issues and I was being asked to look at budget cuts. The contract with Sipapu had cost nearly \$200,000 per year for approximately 175 investigations annually DHS could save money by reallocating a portion of this money to the Office of Services Review and broaden the scope of the duties as well.

Here are the other advantages I identified in using the Office of Services Review:

- 1) They were already performing independent system oversight because they had been established in response to the Federal Court ordered oversight in the David C class action case.
- 2) They were independent of any other division because they reported directly to me and were required by statute to be audited regularly by the Legislative Auditor General. They were not a service agency.
- 3) OSR personnel were already trained in and familiar with abuse/neglect investigations and had the necessary expertise. Even though some OSR employees were former DCFS employees, there was (a) proven objectivity, and (b) a complement of staff with auditing experience, as opposed to direct service experience.
- 4) OSR already knew the work of the different divisions and had the ability to build a system that could be consistent, even outside of DCFS related parties' issues.
- 5) OSR's Director, Brad McGarry, has a long history of providing analysis and oversight. He is not a service agent. He is finely tuned to ethical issues.
- 6) Government auditing standards state that independence is satisfied if the auditor reports directly to the Executive Director of the Department.
- 7) Using a team already engaged in auditing saved money and presented efficiencies of operation.

I made the decision to implement the new procedure for Related Parties investigations in 2008 but, due to the press of the legislative session, this transition was difficult to make. Considerable training needed to ensue across the Department. We began holding meetings with stakeholders and, in the interim; we had an agreement to

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proceed with a combination of OSR taking referrals and DCFS helping to investigate. In October 2008 the Notice of Proposed Rule was sent out. No public comment was received. The rule was adopted in December 2008.

I believe the Rule and the practice of OSR have substantially met the three goals I set forth in the beginning. OSR performed 281 investigations last year. The investigations are done by an entity independent of the service agencies or providers they are investigating. The same standards are being applied across all agencies. The investigations have been done by capable staff with DCFS experience similar to the former contractors, but with the additional experience of having provided more objective oversight and analysis. There has been an added benefit in that the investigations are being done more efficiently for less money. (Copy of Related Parties Annual Report attached).

Since this present concern about the rule has arisen, I have met and discussed this issue with some of you and also discussed it with Senator Buttars, who was a driving force behind the statute we are considering. I believe DHS has done the best it can to meet the spirit of the law as it was passed.

Please know that my sincere intent is to have the most independent, professional investigations that my operations will allow. After sustaining the \$28 million in budget cuts last year I do not know where we would get the money to re-issue the RFP and separately contract, but if that is your instruction, we will immediately re-issue it and look to cut other services to fund it. Based on my earlier efforts, I remain concerned that the RFP will not produce bidders who have the independence, expertise and ability to provide consistent department-wide investigations with the budget we would have available.

Finally, it is important to remember that the investigations will still have to be done. If the rule is sunset, we will still receive calls the next day alleging abuse and neglect against a Related Party. I think there are other options we could consider, such as clarifying the statute to create more investigative options or allowing me to do a formal contract with OSR that is supervised more closely by an outsider such as the Attorney General or the Legislative Auditor.

I look forward to working with you on this matter.